

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S LICENSE No. 57166  
Issued to: Terry L. Wedgeworth

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2453

Terry L. Wedgeworth

This appeal has been taken in accordance with 46 U.S.C. § 7702 and 46 CFR Part 5, Subpart J.

By order dated 3 October 1986, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri, suspended Appellant's license for four months remitted on twelve months probation upon finding proved a charge of negligence. The negligence charge was supported by a specification which alleged that Appellant, while serving as operator on board the M/V TAMERA PICKETT, under authority of the captioned document, on or about 26 August 1985, failed to maintain adequate control of said vessel and tow resulting in an allision with the stationary DREDGE II at approximately Mile 283 on the Arkansas River.

The hearing was held at Memphis, Tennessee, on 28 May 1986.

Appellant was represented by professional counsel at the hearing, and denied the charge and specification.

The Investigating Officer introduced in evidence seven exhibits and the testimony of three witnesses. In defense, Appellant introduced in evidence four exhibits, his own testimony, and the testimony of one other witness.

After the hearing, the Administrative Law Judge rendered a decision in which she concluded that the charge and specification had been proved, and entered a written order suspending all licenses and documents issued to Appellant for four months, remitted on twelve months probation.

The complete Decision and Order was served on 11 October 1986. Appeal was timely filed on 10 November 1986 and perfected on 12 February 1987.

FINDINGS OF FACT

On August 26, 1985, the M/V TAMERA PICKETT was downbound on the Arkansas River pushing a tow of three barges. The length of

the tow was 900 feet and its width was 54 feet. At the time preceding and during the incident is question the DREDGE II, an eighty-foot long hydraulic dredge, was located in the vicinity of Mile 283 on the Arkansas River, dredging to improve the channel. The dredge had no mechanical propulsion, but was secured in place through the use of spuds and anchors. It was tended by the M/V BETTY SUE, a small towboat. After Appellant brought the TAMERA PICKETT through lock 13, he made a security call and spoke to Mr. Marks, the "leverman" (tender) of DREDGE II. Mr. Marks gave his position at Mile 283, and stated that they would get out of the way when the Appellant's vessel lights were shining on a dayboard which was about three miles above the dredge. When Marks saw the lights reflected off the dayboard, he had the towboat move the dredge. However, the record is unclear as to the position of the dredge after it was moved. Whether or not it was partially in the channel is unclear. Appellant communicated with the DREDGE II several times during the maneuver. However, the dredge never indicated to Appellant the existence of an equipment barge moored to the bank opposite the dredge at a short distance above the dredge. During Appellant's attempt to pass the DREDGE II, he struck the ladder and cutter head of the dredge, and grounded below it. Appellant claims that his navigation was embarrassed by the unexpected presence of the equipment barge on the right descending bank, and by the DREDGE II's extension into the channel. The facts as to both these claims are unclear from the Record.

#### BASES OF APPEAL

Appellant advances a number of bases for appeal. Due to the disposition of the case, these will not be addressed.

#### OPINION

The record compiled in this case is insufficient to permit meaningful review of the issues involved in appeal. In particular, the testimony of two witnesses (Leon Marks, TR 52-102, and Robert C. Collins, TR 185-199) is unintelligible because it makes repeated references to blackboard drawings which were not reproduced for the record. These drawings and the testimony relating to them are important to material issues in dispute, i.e., the positions of buoys, the equipment barge moored opposite the dredge, and the dredge itself.

The regulations governing these proceedings state that "[t]he hearing transcript, together with all papers and exhibits filed, shall constitute the record for decision on appeal." 46 CFR 5.701(b). The Administrative Procedure Act, which applies to these proceedings, also requires agency appeals to be decided based on the record as a whole. 5 U.S.C. §§ 554-57; see 46 U.S.C. §

7702(a). Omissions from a record of hearing of a substantial nature, which relate to significant matters in the proceeding, effectively preclude meaningful review. Appeal Decision 2276 (LUDLUM). This is exactly the situation in this case. The omission of the drawings used in critical, conflicting testimony renders the record of that testimony useless, and the record inadequate.

#### CONCLUSION

Because effective appellate review is impossible based on this record, the charge and specification should be dismissed and the Administrative Law Judge's order vacated.

#### ORDER

The order of the Administrative Law Judge dated at St. Louis, Missouri, on 3 October 1986 is VACATED. The charge is DISMISSED.

J. C. IRWIN  
Vice Admiral, U.S. Coast Guard  
VICE COMMANDANT

Signed at Washington, D.C. this 22 day of June, 1987.